



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

ADVERTISING SCHEMES AND THE LOTTERY LAW.

There probably has been no more marked progress in the criminal law in any branch than that which is evidenced by legislative prohibitions against lotteries and kindred enterprises. Most of us in middle life can well remember the Louisiana lottery, and many have seen men who made fortunes great and small out of it, and many more who squandered fortunes great and small upon it. But so rigorous has been the application of the statutes and the enactment of new ones that lotteries are largely a thing of the past and there are no chances of this nature which do not seem to be prohibited in one form or another except lawsuits and matrimony.

Lotteries have been defined to be a species of gaming by a scheme for the distribution of prizes by chance among persons who have paid or agreed to pay a valuable consideration for the chance to obtain a prize.¹ There must be something gained or won by lot. Chance is an essential element, whether it be as to any return or merely as to the value of the return. There must be a sum ventured on the chance of obtaining a greater value.² There must be a pecuniary consideration paid and it must be determined by lot or chance according to some scheme held out to the public what and how much he who pays the money is to have for it.³ A valuable consideration must be paid directly or indirectly for a chance to draw a prize by lot.⁴ A valuable consideration must be paid directly or indirectly for a chance to draw, and if there is no valuable consideration as where persons are gratuitously given business cards, each card entitling the holder to a chance to draw a piano there is no lottery.⁵

It will thus be seen that there are three essential elements to every lottery, first, the payment of a consideration; second, the receiving of something in return which may be of greater or less

1. *Burks v. Harris*, 91 Ark. 205, 120 S. W. 979, 69 Cent. L. J. 647.

2. *State v. Perry*, 154 N. C. 616, 70 S. E. 387, 45 Cent. L. J. 404; *Chaney Park Land Co. v. Hart*, 104 Ia. 592, 73 N. W. 1059, 46 Cent. L. J. 234.

3. *Hall v. Ruggles*, 56 N. Y. 424.

4. *Cross v. People*, 18 Colo. 321, 32 Pac. 821, 36 Am. St. Rep. 292, 36 Cent. L. J. 435.

5. *Cross v. People*, 18 Colo. 321, 32 Pac. 821, 36 Am. St. Rep. 292.

value than the consideration; third, the determination as to whether it is of greater or less value or not by lot or chance. And when we come to measure advertising schemes which savor of chance and which are held out as a trade inducement we must find each one of these three essentials present, or we do not find a lottery. We may go further and say upon the basis of decisions which will be referred to shortly that enactments designed to prohibit certain classes of advertising schemes will not ordinarily be upheld as an exercise of the police power unless the project aimed at by the statute contains these elements, for it seems to be a well settled doctrine that the device to which the prohibition is directed must contravene good morals and that in order to contravene good morals it must be a lottery. We may not, however, lose sight of the fact that this doctrine has not gained universal support and that there are respectable decisions to the contrary, but as was said by the court in disposing of these authorities in a case to which reference will be made hereafter these decisions have not been of sufficient force to create a ripple in the current of authority.

Trading Stamps.—The field to which we have just been referring is the legislation against what is known as trading stamps. A great many states have tried to prohibit trading stamps. This may be briefly described as an advertising plan by which the trading stamp concern agrees to put a merchant's name, in a list, published in a book, containing blanks along with the names of other merchants who give trading stamps issued by the concern which publishes the book. In return the merchant purchases trading stamps of the advertiser for a consideration and gives these stamps to each one of his cash customers in proportion to the amount they buy. The customer then sticks these stamps in the blanks in the book which has been given him by the advertiser, and when he has secured a certain number, usually 990, he is entitled to take the book to a store which is kept by the advertiser and there exchange his stamps for some article kept on display at the store. Now these enactments directed at this trading stamp advertising plan have been almost universally held to be void as beyond the power of the legislative body under the police power, and this holding has been supported by the doctrine that the plan contains no element of chance, that there is nothing uncertain,

undetermined or unknown.⁶ In short the trading stamp business has been held not to be within the prohibition of existing lottery laws and has also been held not to be contrary to good morals, and therefore not within the scope of the police power to prohibit in nearly all of the jurisdictions where the question has arisen; the basis of the holding being that it does not appeal to the gambling instinct, contains no element of chance and lacks two of the essential elements of our definition of lottery, namely, the receiving of something of a lesser or greater value than the consideration paid, and the determination of whether or not that thing shall be of a greater or lesser value by lot or chance.

The contrary view has been taken by the Supreme Court of the District of Columbia which position has been in effect sustained by the Supreme Court of the United States. The holding is based on a somewhat peculiar legislative condition. The legislative assembly of the District of Columbia in 1871 provided for the licensing of gift enterprises. This provision for licensing was disapproved by Congress and the act was thus left prohibiting such enterprises. The trading stamp business was held to be within this prohibition and the United States Supreme Court refused to grant a writ of certiorari.⁷

Lot Sales.—Another plan for advertising the sale of property which has been much discussed by the courts concerns the sale of lots in a newly platted addition to some city or village, usually

6. *State v. Shugart*, 138 Ala. 36, 35 So. 28, 100 Am. St. Rep. 17; *Ex parte Drexel*, 147 Cal. 763, 82 Pac. 429, 2 L. R. A. (N. S.) 588; *City and County of Denver v. Frueauff*, 39 Colo. 20, 88 Pac. 389; *State v. Hawkins*, 95 Md. 133, 51 Atl. 850, 93 Am. St. Rep. 328; *State v. Caspare*, 115 Md. 7, 80 Atl. 606; *Commonwealth v. Sisson*, 178 Mass. 578, 60 N. E. 385; *State v. Sperry-Hutchinson Co.*, 110 Minn. 378, 126 N. W. 120; *State v. Sperry-Hutchinson Co.*, 94 Neb. 785, 144 N. W. 795, 49 L. R. A. (N. S.) 1123; *People v. Dycker*, 76 N. Y. Supp. 111, 72 App. Div. 308; *State v. Dalton*, 22 R. I. 77, 84 Am. St. Rep. 818, 48 L. R. A. 775, 51 Cent. L. J. 1; *State v. Dodge*, 76 Vt. 197; 56 Atl. 983; *Young v. Commonwealth*, 101 Va. 853, 45 S. E. 327.

7. *District of Columbia v. Craft*, 35 App. D. C. 253; *Craft v. District of Columbia*, 218 U. S. 673, 31 Sup. Ct. 223, 54 L. Ed. 1205; *District of Columbia v. Gregory*, 35 App. D. C. 271; *Gregory v. District of Columbia*, 218 U. S. 673, 31 Sup. Ct. 223, 54 L. Ed. 1205; See also, *In re Gregory*, 219 U. S. 210, 31 Sup. Ct. 143, 55 L. Ed. 213.

coupled with a scheme for securing a factory or similar enterprises at or near the property platted. Substantially the same plan has been pursued in each case differing only in detail, but these differences are important upon the question of the validity of the plan. A general outline of the plan is that some one interested in promoting some industry which is to be located in a city or town secures a tract of land on which or near which it is proposed to locate the industry. This tract is platted and persons select lots on the plat subscribing therefor and paying a level price, the apportionment of lots among the subscribers being subsequently determined by chance. It will be seen that where the lots are of unequal value, as they must necessarily be in practically every case, our definition as to what constitutes a lottery is transgressed by this plan of disposition of the property, and a plan pursued along this line has generally been condemned,⁸ and a contract for the sale of land in accordance with this method has consequently been held void on the ground that it constitutes a lottery. If, however, the subscribers purchase the property and each agrees to contribute a certain sum the fact that the parcels are later apportioned among the subscribers by lot does not invalidate the subscriber's contract as it is considered that the promoter or vendor does not participate in the method of distribution, the contract contemplating that the subscribers may use their own method and it not being illegal for tenants in common to divide the property among themselves by lot.⁹ The distinction being that the division by lot was no part of the original contract as was pointed out in the Arkansas case cited above.¹⁰

Likewise where to induce the sale of lots at auction each purchaser is granted the right of participating in a subsequent draw-

8. *Paulk v. Jasper Land Co.*, 116 Ark. 178, 22 So. 495; *Burks v. Harris*, 91 Ark. 205, 120 S. W. 979, 69 Cent. L. J. 647; *Lynch v. Rosenthal*, 144 Ind. 86; 42 N. E. 1103, 55 Am. St. Rep. 168, 31 L. R. A. 835, 42 Cent. L. J. 435; *Guenther v. Dewein*, 11 Ia. 133; *Wooden v. Shotwell*, 24 N. J. L. (4 Zab.) 789, affirming 23 N. J. L. (3 Zab.) 465; *Jackson Steel Nail Co. v. Marks*, 4 Ohio Cir. Ct. R. 343.

9. *Lauder v. Peoria Agricultural & Trotting Soc.*, 71 Ill. App. 475; *Washington Glass Co. v. Mosbaugh*, 19 Ind. App. 105, 49 N. E. 178; *McCleary v. Chipman*, 32 Ind. App. 489, 68 N. E. 320; *Chaney Park Land Co. v. Hart*, 104 Ia. 592, 73 N. W. 1059, 46 Cent. L. J. 234.

10. *Burks v. Harris*, 91 Ark. 205, 120 S. W. 979, 69 Cent. L. J. 647.

ing for a lot which is not put up for sale, but which is offered as a prize to each purchaser at the auction, the entire transaction is tainted and a sale of any lot at the auction cannot be enforced.¹¹ It may at first blush appear to be a little difficult to reconcile these holdings but when the situations presented in the various cases are analyzed the reason is plain. These were not criminal prosecutions for violation of the lottery law, they were suits depending upon the contracts for the purchase of the lots. Now, if these contracts were for the purchase of an indefinite interest in a tract of land which had been divided into parcels, the fact, that the purchasers subsequently resolved among themselves to determine the parcel which should go to each of them by chance or lot, in which resolution the vendor did not participate, would not inject a lottery into the contract, but if the contract contemplates that the division shall be by lot then it would be tainted with the vice of a lottery and would be void. In the one case the contract is not so tainted, and in the other case it is and the lottery lies in the fact that one may receive more or less than what he pays for, it depending upon chance.

Suit Clubs.—Another scheme for securing the sale of goods by means of special inducements is the plan of forming a "suit club" in which there are as many members as the price of a suit of clothes which a merchant or a tailor, who organizes the club is to furnish, and into which each member contributes a dollar each week for as many weeks as the price of the suit, until he secures the suit by lot, a drawing being had each week at which some one draws a suit of clothes and drops out of the club and his place is taken by some one else. It will be seen that under this plan every member will pay no more for a suit of clothes than its value, but he may pay much less and he may secure the suit for any sum over one dollar up to its price. This device has been before the courts in a number of different cases and has been universally condemned as a lottery, the chance being to receive much more than what is paid for, determined by lot.¹²

11. *Whitley v. McConnell*, 133 Ga. 738, 66 S. E. 933.

12. *De Florin v. State*, 121 Ga. 593, 49 S. E. 699, 104 Am. St. Rep. 177, 60 Cent. L. J. 422; *People v. McPhee*, 139 Mich. 687, 103 N. W. 174, 12 D. L. N. 41, 69 L. R. A. 505; *State v. Moren*, 48 Minn. 555, 51 N. W. 618.

Prize Packages.—Another common plan of inducing the sale of goods has been to put letters or numbers, cards or articles in packages of food or tobacco so that the purchaser of the package would receive directly or as a result of saving the coupons found in the package certain articles additional to what he purchased; important prizes only being given upon coupons placed in very few packages. These schemes have been universally condemned, for example, a cereal company in order to induce the sale of its oats placed upon coupons in each of its packages some one of the letters which would spell "Mother's," the letter "o" being placed upon only one coupon in 500; prizes of a small value being given for a certain number of all of the coupons, but important prizes being given for the collection of coupons spelling the word "Mother's." This was condemned under the Federal statutes and a conviction of violating the Federal Lottery Law was upheld.¹³ Likewise the same lottery law was held infringed by placing a tag in one out of each one hundred five cent cuts of plug tobacco redeemable for fifty cents,¹⁴ and also by placing portions of paper animals in food packages, an important prize being given to any one who secured seven complete animals by saving and putting together the portions found in the packages,¹⁵ the chance consisting in being able to secure seven complete animals. So where prizes are put in boxes of candy, the purchaser selecting his box in ignorance of its contents and the prizes contained in the boxes being of different values, it was held a lottery was intended.¹⁶ It has also been held that the sale of a package of coffee on which was pasted slips, each one marked "one plate," in return for each slip the purchaser of the coffee was entitled to a plate, was a gift enterprise in violation of the Maryland statute,¹⁷ but the Court of Appeals of New York held that the giving away of a cup and saucer with two pounds of coffee was

13. *United States v. Jefferson*, 134 Fed. 299; *Sheedy v. District of Columbia*, 19 App. D. C. 280.

14. *United States v. One Box Tobacco*, "Foot Prints," 111 C. C. A. 459, 190 Fed. 731.

15. *United State v. McKenna*, 149 Fed. 252.

16. *Holoman v. State*, 27 Tex. App. 610, 28 Am. Rep. 439.

17. *Long v. State*, 73 Md. 527, 21 Atl. 683, 25 Am. St. Rep. 606, 12 L. R. A. 89, 33 Cent. L. J. 170.

not a lottery,¹⁸ and the lottery law is not transgressed by the giving of a photograph to each purchaser of a package of tobacco, although the purchaser is privileged to select the photograph he desires from among a number which are on display.¹⁹ It is a lottery, however, for a person to sell packages of candy,²⁰ gum,²¹ or tea²² and with, or in the package to give a number or coupon entitling the purchaser to some article of a greater or lesser value depending upon the chance of obtaining the right number. Likewise a sale of envelopes containing popular songs, and also a card entitling the purchaser to buy any article in the store for \$1.00, those articles being of a greater and lesser value is a lottery,²³ and the sale of books numbered on the outside entitling to the drawing of a prize depending upon the correspondence of the number on the book purchased with a certain table of numbers in a book kept by the seller is a lottery;²⁴ and for a merchant to display a box in his window containing a sum of money and the giving of a key with each purchase, only one key being capable of unlocking the box, and the contents of the box going to the person who secures the right key is a lottery.²⁵

Guessing Contests.—A newspaper which offers a prize to a subscriber who pays a certain sum more than the regular subscription price for his subscription to the newspaper for the nearest correct guess upon the total vote to be received by a state officer at a coming election is a lottery;²⁶ and the giving of a ticket to each newspaper subscriber, the holder of the lucky number as determined by a committee of the subscribers to receive a prize,

18. *People v. Gillison*, 109 N. Y. 389, 17 N. E. 343, 4 Am. St. Rep. 465.

19. *Commonwealth v. Emerson*, 165 Mass. 146, 42 N. E. 559.

20. *Hall v. Ruggles*, 56 N. Y. 424; *State v. Lumsden*, 89 N. C. 572.

21. *People v. Runge*, 3 N. Y. Cr. R. 85.

22. *State v. Boneil*, 42 La. Ann. 1110, 8 So. 298, 21 Am. St. Rep. 413, 10 L. R. A. 60, 2nd 42 La. Ann. 1207, 8 So. 300.

23. *Dunn v. People*, 40 Ill. 465.

24. *State v. Clarke*, 33 N. Y. 329, 66 Am. Dec. 723.

25. *Davenport v. City of Ottawa*, 54 Kan. 711, 39 Pac. 708, 45 Am. St. Rep. 303, 40 Cent. L. J. 361.

26. *Stevens v. Cincinnati Times Star Co.*, 72 Ohio St. 112, 73 N. E. 1058, 106 Am. St. Rep. 586.

is a lottery, where the committee distributed the prizes by lot.²⁷ Examination of this last case discloses that if it were to be followed as precedent the scheme discussed above for distributing lots of land would have been held to be a lottery had the question been raised in a criminal prosecution instead of in an action based upon a contract.

Voting Contests.—Generally speaking, the plan of offering prizes of various natures through newspapers, or in aid of societies, churches, schools or lodges to persons who receive the highest number of votes of patrons have been held not to transgress the lottery law.²⁸ For example, where at a church fair two boxes were placed for receiving money and labeled with the name of some member, and the person whose box is found to contain the most money after the voting is over is to receive a prize, and the church or society to receive the contents of the box is not a lottery.²⁹

Slot Machines.—The use of slot machines to assist trade by distributing prizes in accordance with certain showings made by the machine has been universally condemned and prosecutions have been sustained where the purchaser of goods receives with the purchase a chance to win upon the operation of the machine. This has been held to make the entire transaction a lottery and punishable as such.³⁰

From all of which it appears certain that the law is pretty well settled that a lottery may consist in any advertising scheme or device whereby a customer receives for a consideration great or small a chance to obtain a greater consideration, his right to which is determined by lot or chance.

COLIN P. CAMPBELL.

Grand Rapids, Mich.

27. *State v. Mumford*, 73 Mo. 647, 39 Am. Rep. 532.

28. *Quatsoe v. Eggleston*, 42 Ore. 315, 71 Pac. 66, 56 Cent. L. J. 332.

29. *Dion v. St. John Baptiste Soc.*, 82 Me. 319, 19 Atl. 825.

30. *Lioseau v. State*, 114 Ala. 34, 22 So. 138, 62 Am. St. Rep. 84, 45 Cent. L. J. 68; *Meyer v. State*, 112 Ga. 20, 37 S. E. 96, 51 L. R. A. 496; *City of New Orleans v. Collins*, 52 La. Ann. 973, 27 So. 532.